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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALTON B. HORNBACK, Plaintiff, v. UNITED STATES OF AMERICA, Defendants.	Civil Case No. 08 CV 0127-WQH-BLM DEFENDANT THE UNITED STATES' EX PARTE APPLICATION FOR ADDITIONAL TIME TO RESPOND TO PLAINTIFF'S PETITION FOR WRIT OF MANDAMUS

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 6(b)(1)(A), it is requested that the Court issue an order providing additional time for the United States (hereafter the "Government") to respond to the latest lawsuit filed in this dispute by Plaintiff Alton Hornback. Such an order is authorized under Fed. R. Civ. P. 6(b)(1)(A), which allows the Court for good cause to extend time for an act that must be done within a specified time "with or without motion or notice if the court acts, or if a request is made, before the original time, or its extension expires . . . "

Further, Local Rule 12.1 for this District provides that extensions of time for responding to a complaint shall only be secured by obtaining the approval of a judicial officer, who shall base the decision on a showing of good cause.

II. RELEVANT PROCEDURAL BACKGROUND

This action arises under 35 U.S.C. § 183, the section of the U.S. Code governing the patentability of inventions and grant of patents. Ordinarily, in an action originally filed in United States District Court against the United States, the time for response to a complaint against the United States is set forth in Fed R. Civ. P. 12(a). That rule affords "60 days after service upon the United States Attorney . . ." within which to respond to the Plaintiff's pleading as opposed to the 20 days generally afforded to non-federal defendants under the Rule. Pursuant to that calculation, and as noted on the Court's docket for this case, the United States must file a response to Plaintiff's operative pleading on or before March 24, 2008.

III. ARGUMENT

This case is the latest chapter in a long history of litigation that dates back to the 1980's. Alton Hornback is a pro se plaintiff who has filed multiple lawsuits regarding this subject matter in both the United States Court of Federal Claims,[1/] and now in the Southern District of California.[2/] These lawsuits have at different times been directed towards various agencies and offices, including different branches of the military, and the Patent and Trademark Office. To date, the majority of these cases have been dismissed, while the remaining suits have pending dispositive motions on file.

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[1/] Hornback v. United States, No. 96-121C; Hornback v. United States, No. 96-647C; Hornback v. United States, No. 98-58C; Hornback v. United States, No. 99-38C; Hornback v. United States, No. 99-168C; Hornback v. United States, No. 00-374C; Hornback v. United States, No. 01-99C; Hornback v. United States, No. 01-136C; Hornback v. United States, No. 02-1915C; Hornback v. United States, No. 03-2063C.

[2/] Hornback v. United States, Case No. 89CV1914-R(M) (S.D. Cal. Oct. 2, 1992), aff'd, 16 F.3d 422, 1993 WL 528066 (Fed. Cir. Dec. 22, 1993) (unpublished), cert. denied, 511 U.S. 1070 (1994); Hornback v. United States, Case No. 94CV0952-IEG(LSP) (S.D. Cal. Sept. 21, 1995), aff'd, 91 F.3d 152, 1996 WL 368135 (9th Cir. June 28, 1996) (unpublished); Hornback v. United States, Case No. 04CV0339-WQH(WMc) (S.D. Cal. Aug. 4, 2004), aff'd, 127 Fed. Appx. 964, 2005 WL 844627 (9th Cir. Apr. 13, 2005) (unpublished), cert. denied, 126 S. Ct. 665 (2005); Hornback v. United States, Case No. 05CV2184-JM(AJB) (S.D.Cal. Mar.7, 2006) (dismissed); Hornback v. United States, Case No. 06CV0825-BTM(RBB) (S.D. Cal. Aug. 15, 2006) (dismissed).

Given this lengthy history, Plaintiff's newest lawsuit must be put into context, requiring significant time to prepare a response. Additionally, the technical nature of the lawsuit requires expertise and coordination between different agencies. Due to relative workloads, additional time would be beneficial to allow counsel an opportunity to fully examine Plaintiff's latest lawsuit in order to prepare a suitable response. Therefore, the Government respectfully requests an additional 21 days to respond to Plaintiff's complaint.

IV. CONCLUSION

For the above stated reasons, the Government respectfully requests that the Court grant an additional 21 days to respond to Plaintiff's lawsuit. Pursuant to this additional time, the Government's response to Plaintiff's Petition for Writ of Mandamus would be due on or before April 14, 2008.

DATED: February 29, 2008

Respectfully submitted,

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s/ Steve B. Chu

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